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Central Intelligence Agency

Washington, D.C. 20505

DIRECTORATE OF INTELLIGENCE

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China-US: Prospects for a Bilateral Investment Treaty [redacted] 25X1

Summary

Negotiations for a bilateral investment treaty, under way since mid-1983, appear indefinitely stalled. The Chinese fear resolution of four major issues--treatment of investment, currency transfers, compensation for expropriation, and arbitration of disputes--will result in infringements on their sovereign rights. Moreover, Beijing does not appear to view a treaty as an essential ingredient for maintaining an adequate level of foreign investment. As a result, we expect the Chinese to continue to raise objections to major US concerns, and we do not look for an agreement soon. [redacted] 25X1

BIT Talks Friendly But Inconclusive

Negotiations for a US-China Bilateral Investment Treaty (BIT) which began formally in June 1983, were suspended in April 1985 after six rounds. Though no agreement was reached and no seventh round was scheduled, the talks remained

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This memorandum was prepared by [redacted] Office of East Asian Analysis. Information available as of 4 November 1985 was used in its preparation. Comments and queries are welcome and may be directed to the Chief, Development Issues Branch, China Division, OEA, [redacted] 25X1 25X1

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friendly, each side expressing a desire to conclude a treaty. However, firmly held positions on four issues continue to prevent agreement:

- Treatment of Investment. In BITs already concluded with other Western nations, the Chinese have been very reluctant to grant more than most-favored nation (MFN) status.* MFN grants an investor access to Chinese markets equal only to the access allowed other foreign investors. Beijing is not willing to grant US desires for national treatment, under which US investors would obtain the broader access to Chinese markets accorded to China's own domestic enterprises. In that case, the Chinese leadership believes that it would lose too much control over its own markets.

- Currency Transfers. China's other BITs permit investors access only to the foreign currency accounts of the enterprise in which they invested, thus inhibiting their ability to purchase from abroad those goods that can be obtained domestically. In this way, China tries to protect domestic industries, maintain employment levels, and regulate foreign exchange reserves.

- Compensation for Expropriation. The right of a host country to expropriate and the right of an investor to compensation for expropriation are recognized in international law, but it is not clear in Chinese BITs whether the timing and amount of compensation would be determined by international or Chinese standards. Beijing maintains that international law favors developed countries and is holding out for more "equitable" treatment.

- Arbitration of Investment Disputes. China is also reluctant to agree to international standards for dispute settlement. In BITs already concluded, China has limited outside arbitration to issues of compensation. [redacted] 25X1

> **What is a BIT?**
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> A Bilateral Investment Treaty is a comprehensive investment agreement signed by a developing and a developed nation. It is designed to make the investment environment in the developing nation more attractive to investors from the developed nation. It establishes rules of conduct for both the investor and the host government to ensure both of noncapricious, nondisruptive, and nondiscriminatory behavior. [redacted] 25X1

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* China has signed BITs with the following countries: Belgium, Luxembourg, France, Germany, Italy, Netherlands, Norway, Romania, Sweden, Switzerland, and Finland. The US is in various stages of BIT negotiations with: Egypt, Panama, Haiti, Morocco, Senegal, Turkey, Zaire, Cameroon, Bangladesh, and Costa Rica. [redacted] 25X1

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Conclusion of an Agreement Unlikely

China is under little pressure to sign a BIT with the United States. Large US firms with the legal and financial resources necessary to engage in prolonged and detailed contract talks presently are able to negotiate many of the safeguards that would be covered by a BIT. As a result, the United States continues to be a major investor in China even without a BIT. Moreover, because of a projected trade deficit this year, China is particularly disinclined to yield on issues relating to foreign exchange controls and currency transfers. 25X1

Furthermore, we believe China may be more interested in using BITs as a means of establishing legal precedents favorable to the third world than increasing foreign investment. China has explicitly stated its commitment to standards expressed by the Group of 77 in the Charter of Economic Rights and Duties of States particularly with regard to treatment of investment and compensation for expropriation. 25X1

Until China believes that the signing of a BIT will cause investment to rise significantly or that abiding by international norms will serve Beijing's broader political interests, it is unlikely to alter its present negotiating position. Therefore, a prompt conclusion of a comprehensive BIT is highly unlikely. 25X1

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